

## **REMARKS**

### **I. Status of the Claims**

Claims 2-9 are pending.

### **II. A prima facie case of obviousness is not established for Claims 2-9 over Bernstein et al.**

The examiner admits that "Applicant is essentially claiming an interval treatment regimen over that of the standard one taught by Bernstein et al."

Referring to Bernstein, the examiner argues on page 3 of the Action using impermissible hindsight, not evidence, that "Those of ordinary skill would have found it well within their ability to modify the claimed treatment regimen in any number of ways including the interval type regimen set out in the instant claims."

These conclusory statements are not sufficient to establish an obviousness rejection, so a prima facie case is not established. Without that, a request for comparative data and unexpected results is not reasonable. Even were a prima facie case established, there is no support for the requirement for comparative data. The examiner requests comparative data to show the present invention is superior to that in Bernstein but there is no legal requirement for such comparative studies. Data is provided in the examples to show efficacy of short term, non-standard treatments such as in Bernstein for pain relief caused by various conditions.

The present application relates use of civamide for long term pain relief-replacing daily administration of the drug with a single, or several single, short term applications. Short term is defined on pages 3-4.

### **Conclusion**

Applicant believes that the present application is now in condition for allowance. Applicant respectfully requests favorable reconsideration of the present application and the claims as set forth herein.

Applicant's current representatives have only recently taken over this case, therefore a telephone interview is requested before the next Action to determine allowable claims.

A Petition for a Three-Month Extension of time is submitted herewith.

No other fees are believed to be owed in connection with the submission of these amendments. However, please charge any fees that might be due in connection with this paper

to the Account of Barnes & Thornburg LLP, Deposit Account 12-0913 with reference to file 41957-102740.

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in cursive script, appearing to read "Alice O. Martin", written over a horizontal line.

Alice O. Martin

Attorney Registration No. 35,601